Temenggong Dato' Lau Lee Meng, The Chairman of United Chinese School Committee's Association of Malaysia (suing on behalf of himself and all other members of United Chinese School Committee's Association of Malaysia except for the members supporting the amendments to the Articles of Association of Dong Jiao Zong Higher Learning Centre Bhd) & Ors v Menteri Perdagangan Dalam Negeri, Koperasi dan Kepenggunaan Malaysia & Anor

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO W-01(A)-362–09 OF 2016
DAVID WONG, HAMID SULTAN AND UMI KALTHUM JJCA
15 SEPTEMBER 2017

Companies and Corporations — Articles of association ('AA') — Alteration of articles — Company passed special resolution at extraordinary general meeting to amend clauses in AA to, inter alia, reduce number of nominees of its founder members sitting in its board of directors — Amendments sent to Minister concerned for approval as required by company's memorandum of association and s 24(4) of the Companies Act 1965 — Minister approved amendments acting on advice of Companies Commission of Malaysia ('CCM') — Whether Minister 'mechanically' approved changes to AA by relying on advice or recommendation of CCM or properly exercised his discretion in making his decision — Whether company's failure to make full disclosure to CCM of all relevant information concerning the rationale and justification for the changes to the AA disabled Minister from making a well-informed decision — Whether Minister's decision to be quashed on ground of Wednesbury unreasonableness

The United Chinese School Committees' Association of Malaysia ('Dong Zong'), United Chinese School Teachers' Association of Malaysia ('Jian Zong') and Merdeka University Bhd ('Merdeka University') had jointly incorporated the second respondent ('R2') for the purpose of promoting Chinese education in Malaysia. Article 14(b) of R2's articles of association ('AA') provided that its board of directors ('the BOD') shall consist of not more than 31 members made up of five nominees each from Dong Zong, Jian Zong and Merdeka University, ten other elected individuals and six more who were appointed by the BOD. In an extra-ordinary general meeting ('EGM'), R2 passed two special resolutions — one, to amend article 14(b) and the other, to delete article 18(viii) of the AA concerning the disqualification of directors. The amendment to article 14(b) sought to increase the membership of the BOD to 35 by reducing the number of nominees representing Dong Zong, Jian Zong and Merdeka University to two each, increasing the number of elected

members to 25 and reducing the number of members appointed by the BOD to four. In keeping with cl 5 of R2's memorandum of association ('MA') and s 24(4) of the Companies Act 1965 — which required any change to the AA or MA to have the consent of the Minister concerned in order to be effective — R2 submitted the two approved resolutions to R1 for his consent. Although the appellants' written objections to the two resolutions were also brought to R1's attention, R1 nevertheless approved the changes to articles 14(b) and 18(viii) of the AA. By way of a judicial review application, the appellants, inter alia, applied to quash R1's decision in approving the changes and sought an order to compel him to direct that the status quo prior to the passing of the two resolutions be maintained. The High Court dismissed the judicial review application, holding that R1 had exercised his discretion properly after giving due regard to all relevant considerations. In the instant appeal against that decision, the appellants argued, inter alia, that the High Court erred: (a) in not finding that R1 had not exercised his own discretion in approving the changes to the AA but had 'mechanically' followed the recommendation of the Chief Executive Officer ('CEO') of the Companies Commission of Malaysia ('CCM') without inquiring whether the CEO had taken into consideration the appellants' letter of objection; and (b) in not appreciating the fact that the changes to the AA diluted the appellants' influence in the BOD by drastically reducing the number of their directors in the board.

Held, by majority, dismissing the appeal:

(1) **(per David Wong JCA, majority)** R1 had before him the letter of complaint and it was perfectly in order for him to have referred it to the CEO of the CCM for his views as it concerned R2, a company limited by guarantee under the Companies Act 1965. R2 had provided the reasons for the relevant amendments to the AA when seeking R1's consent. That being the case, R1 had conducted a proper evaluation of the materials before him before reaching his decision in approving the relevant amendments. It was definitely not a mechanical exercise of discretion. There was no merit in the appellants' submission on this complaint (see para 27).

(2) **(per David Wong JCA, majority)** There was a glaring absence of any prohibition in the AA against any change to the structure of R2's BOD. Without such a prohibition, there was no legal impediment on the part of the members of R2 to exercise their rights under the AA. Had the founders of R2 wanted to have the original structure of the BOD to be permanent that could have been easily done by inserting in the AA a provision to reflect that intention. In any event, it was not the court's duty to substitute its decision to that of the Minister when he was exercising his discretion as empowered by law. The High Court held that the power structure in R2 had not changed with the amendments because in any annual general meeting and/or EGM of R2, the appellants and/or

individual members were only entitled to one vote each. As such, the increase or reduction of the number of nominees of the appellants did not in any way affect the appellants' status in the BOD. At all times, the appellants could collectively represent only three votes, and nothing more, out of the total number in the board of directors in R2. As the appellants never had control as members in R2 in the first place, there could not be any ground to complain that they had lost control of the BOD (see paras 30–32).

(3) **(per David Wong JCA, majority)** This was a clear case of the members exercising their rights entrenched in the memorandum and articles of association of a company. Full compliance of the procedural requirements under the memorandum and articles of association and the legal requirement under s 24(4) of the Companies Act 1965 had been met by R2 (see para 36).

(4) **(per Hamid Sultan JCA, dissenting)** The reasons given by R2 in Annexure A fell short of what was required to be stated and prima facie did not address the information which was required to be stated to the CCM for the Minister's consideration. R2's failure to furnish the required information to the relevant authorities, and that too on a matter related to the community and/or community interest, did not reflect its bona fides in obtaining the authorities' consent. That, per se, led authorities to make a decision without being duly informed. Such conduct undermined the integrity of the executive decision-making process warranting the decision to be quashed (see paras 42–43).

(5) **(per Hamid Sultan JCA, dissenting)** The amendments were not procedural but substantive in nature, affecting a group or community or community interest, and required R2 to make full disclosure to the relevant authority to subscribe to the concepts of accountability, transparency and good governance for the authority to take into consideration the true impact of the amendments before deciding whether they should be allowed or not. R2's failure in not disclosing the crucial information to the authorities tainted the whole process, thus requiring the decision of R1 to be quashed (see para 41).

(6) **(per Hamid Sultan JCA, dissenting)** Unlike in ordinary cases related to company matters, the Minister's consent in the instant case was necessary as he was akin to a referee to ensure harmonious relationship was maintained without any violation to the purpose and intent of R2. R1 stood as a stakeholder in relation to the relevant articles of association. The amendments attempted by R2 were serious as they sought to take control of the strength of the appellants in the decision-making process of R2. As the amendments had such serious implication, if proper information was not supplied to the relevant authorities it was unlikely the Minister could have made an informed decision (see para 44).

(7) **(per Hamid Sultan JCA, dissenting)** R2's conduct led the Minister to make an unreasonable decision in the *Wednesbury* sense. The law on judicial review has advanced from the subjective to the objective test. Any reasonable tribunal properly appraised of the facts and the law would not have succumbed to R2's attempt to amend the AA (see paras 48–49).

[Bahasa Malaysia summary

United Chinese School Committees' Association of Malaysia ('Dong Zong'), United Chinese School Teachers' Association of Malaysia ('Jian Zong') dan Merdeka University Bhd ('Merdeka University') telah menubuhkan bersama responden kedua ('R2') bagi tujuan mempromosikan pendidikan Cina di Malaysia. Artikel 14(b) Artikel Persatuan R2 ('AP') memperuntukkan bahawa lembaga pengarahnya ('LP') akan terdiri daripada tidak lebih daripada 31 ahli yang terdiri daripada lima calon masing-masing daripada Dong Zong, Jian Zong dan Merdeka University, sepuluh orang persendirian yang lain yang dipilih dan enam lagi yang dilantik oleh LP. Di dalam mesyuarat agung luar biasa ('EGM'), R2 meluluskan dua resolusi khas — satu, untuk meminda artikel 14(b) dan lagi satu, untuk membatalkan artikel 18(viii) AP berkenaan ketidaklayakan pengarah. Pindaan kepada atikel 14(b) dipohon untuk menambahkan keahlian LP kepda 35 dengan mengurangkan bilangan calon yang mewakili Dong Zong, Jian Zong dan Merdeka University masing-masing kepada dua, menambahkan bilangan ahli yang dipilih kepada 25 dan mengurangkan bilangan ahli yang dilantik oleh LP kepada empat. Dalam mematuhi klausa 5 memorandum persatuan R2 ('MP') dan s 24(4) Akta Syarikat 1965 — yang memerlukan apa-apa pertukaran kepada AP atau MP untuk mendapatkan kelulusan Menteri yang berkenaan supaya menjadi berkesan — R2 memasukkan kedua-dua resolusi yang diluluskan tersebut kepada R1 untuk kelulusannya. Walaupun bantahan bertulis perayu-perayu kepada kedua-dua resolusi tersebut dibawa kepada perhatian R1, R1 walau bagaimanapun meluluskan penukaran kepada artikel 14(b) dan 18(viii) AP. Melalui permohonan semakan kehakiman, perayu-perayu, antara lain, memohon untuk membatalkan keputusan R1 dalam meluluskan penukaran dan memohon perintah untuk memaksanya untuk mengarah bahawa status quo sebelum kelulusan kedua-dua resolusi tersebut dikekalkan. Mahkamah Tinggi menolak permohonan semakan kehakiman tersebut, dengan memutuskan bahawa R1 telah menjalankan budi bicaranya dengan betul selepas mengambil kira kepada kesemua pertimbangan relevan. Dalam rayuan ini terhadap keputusan tersebut, perayu-perayu berhujah, antara lain, bahawa Mahkamah Tinggi tersilap: (a) kerana tidak mendapati bahawa R1 tidak menjalankan budi bicaranya dalam meluluskan penukaran kepada AP tetapi telah 'mechanically' mengikuti cadangan Ketua Pegawai Eksekutif ('CEO') Suruhanjaya Syarikat Malaysia ('SSM') tanpa menyiasat sama ada CEO telah mengambil pertimbangan surat bantahan perayu-perayu; dan (b) kerana tidak menilai fakta bahawa penukaran kepada AP telah melemahkan pengaruh

perayu-perayu di dalam LP dengan secara drastik mengurangkan bilangan pengarah mereka di dalam lembaga.

Diputuskan, dengan majoriti, menolak rayuan:

(1) **(oleh David Wong HMR, majoriti)** R1 telah membaca surat aduan dan ia adalah mengikut urutan dengan betul untuk dirinya merujuk kepada CEO SSM bagi pendapatnya kerana ia berhubung R2, syarikat yang dibatasi oleh jaminan di bawah Akta Syarikat 1965. R2 telah memberikan alasan-alasan untuk pindaan relevan kepada Ap apabila memohon kelulusan R1. Oleh itu, R1 telah menjalankan penilaian material di hadapannya dengan betul sebelum mencapai keputusannya dalam meluluskan pindaan relevan tersebut. Ia sememangnya bukan pelaksanaan budi bicara mekanikal. Tidak terdapat merit dalam hujahan perayu-perayu atas aduan ini (lihat perenggan 27).

(2) **(oleh David Wong HMR, majoriti)** Terdapat ketiadaan yang jelas mengenai apa-apa larangan di dalam AP terhadap apa-apa pertukaran kepada struktur LP R2. Tanpa larangan sedemikian, tidak terdapat halangan undang-undang ke atas ahli-ahli R2 untuk menjalankan hak mereka di bawah AP. Sekiranya pengasas-pengasas R2 ingin mempunyai struktur asal LP menjadi kekal ia dengan senang dapat dibuat dengan memasukkan ke dalam AP peruntukan untuk membayangkan niat tersebut. Walau bagaimanapun, ia bukan duti mahkamah untuk menggantikan keputusannya kepada apa yang dibuat oleh Menteri apabila dia menjalankan budi bicaranya seperti yang diberikan kepadanya oleh undang-undang. Mahkamah Tinggi memutuskan bahawa struktur kuasa di dalam R2 tidak bertukar dengan pinda-pindan tersebut keranan dalam mana-mana mesyurat am tahunan dan atau EGM R2, perayu-perayu dan/atau ahli-ahli individu masing-masing berhak hanya kepada satu undian. Dengan sedemikian, penambahan atau pengurangan bilangan calon perayu-perayu tidak sama sekali menjejaskan status perayu-perayu di dalam LP. Pada kesemua masa, perayu-perayu boleh memegang secara kolektif hanya tiga undian, dan tidak lebih, daripada bilangan keseluruhan di dalam lembaga pengarah di dalam R2. Memandangkan perayu-perayu pada asalnya tidak pernah mempunyai kawalan sebagai ahli di dalam R2, oleh itu tidak terdapat alasan untuk mengadu bahawa mereka telah hilang kawalan terhadap LP (lihat perenggan 30–32).

(3) **(oleh David Wong HMR, majoriti)** Ini adalah kes jelas ahli-ahli menjalankan hak mereka yang ditetapkan di dalam memorandum dan artikel persatuan syarikat. Pematuhan penuh terhadap kehendak prosedur di bawah memorandum dan artikel persatuan dan kehendak undang-undang di bawah s 24(4) Akta Syarikat 1965 telah dipatuhi oleh R2 (lihat perenggan 36).

(4) **(oleh Hamid Sultan HMR, menentang)** Alasan-alasan yang diberikan oleh R2 di dalam Lampiran A kekurangan apa yang diperlukan untuk dinyatakan dan prima facie tidak menangani maklumat yang diperlukan untuk dinyatakan kepada SSM untuk pertimbangan Menteri. Kegagalan R2 untuk mengemukakan maklumat yang dikehendaki kepada pihak berkuasa relevan, dan perkara tersebut juga berkaitan kepada komuniti dan/atau kepentingan komuniti, tidak membayangkan bona fides nya dalam mendapatkan kelulusan pihak berkuasa. Itu, dengan sendirinya, membawa pihak berkuasa untuk membuat keputusan tanpa diberitahu. Tingkah laku sedemikian menjejaskan proses membuat keputusan eksekutif yang mewajarkan keputusan dibatalkan (lihat perenggan 42–43).

(5) **(oleh Hamid Sultan HMR, menentang)** Pindaan bukan prosedur tetapi bersifat substantif, menjejaskan skumpulan atau komuniti atau kepentingan komuniti, dan memerlukan R2 untuk membuat pendedahan penuh kepada pihak berkuasa relevan untuk menyumbang kepada konsep kebertanggungjawapan, ketelusan dan tadbir urus yang baik untuk pihak berkuasa mengambil pertimbangan kesan sebenar pindaan sebelum memutuskan sama ada ia patut dibenarkan atau tidak. Kegagalan R2 kerana tidak mendedahkan maklumat penting kepada pihak berkuasa mencemarkan proses keseluruhannya, oleh itu memerlukan keputusan R1 dibatalkan (lihat perenggan 41).

(6) **(oleh Hamid Sultan HMR, menentang)** Tidak seperti di dalam kes-kes biasa berkaitan kepada perkara syarikat, kelulusan Menteri dalam kes ini adalah perlu kerana dia adalah seperti pengadil untuk memastikan hubungan baik dikekalkan tanpa apa-apa pencabulan kepada tujuan dan niat R2. R1 berdiri sebagai pihak berkepentingan berhubung kepada artikel persatuan yang relevan. Pindaan yang dicuba oleh R2 adalah serius kerana ia berusaha untuk mengambil kawalan terhadap kekuatan perayu-perayu dalam proses membuat R2. Memandangkan pindaan mempunyai implikasi yang serius, jika maklumat betul tidak dibekalkan kepada pihak berkuasa relevan ia tidak mungkin Menteri dapat membuat keputusan yang tepat (lihat perenggan 44).

(7) **(oleh Hamid Sultan HMR, menentang)** Tingkah laku R2 membuatkan Menteri memutuskan keputusan tak munasabah dari segi keputusan *Wednesbury*. Undang-undang atas semakan kehakiman telah berkembang daripada ujian subjektif kepada objektif. Mana-mana tribunal yang munasabah yang menilai dengan betul fakta dan undang-undang tidak akan tunduk kepada percubaan R2 untuk meminda AP (lihat perenggan 48–49).]

Notes

For cases on alteration of articles, see 3(1) *Mallal's Digest* (5th Ed, 2015) paras 57–61.

Cases referred to

Hj Awang Tengah Hj Awang Amin v Sabah Public Service Commission Government of the State of Sabah [1998] MLJU 10; [1998] 2 CLJ SUPP 40, HC (refd)

Allen v Gold Reefs of West Africa, Limited [1900] 1 Ch 656, CA (folld)

Associated Provincial Picture Houses Ltd v Wednesbury Corporation [1947] 2 ALL ER 680; [1948] 1 KB 223, CA (refd)

Ebrahimi v Westbourne Galleries Ltd and others [1972] 2 All ER 492; [1973] AC 360, HL (refd)

Greenhalgh v Arderne Cinemas Ltd and Others [1950] 2 All ER 1120, FC (refd)

Merdeka University Berhad v Government of Malaysia [1982] 2 MLJ 243, FC (refd)

National Union of Bank Employees v Director General of Trade Unions & Anor [2015] 1 MLJ 881, CA (refd)

Paidiah Genganaidu v The Lower Perak Syndicate Sdn Bhd & Ors [1974] 1 MLJ 220, FC (refd)

Temenggong Lau Lee Meng, The Chairman Of United Chinese School Committee's Association Of Malaysia & Ors v Menteri Perdagangan Dalam Negeri, Koperasi Dan Kepenggunaan Malaysia & Anor [2017] MLJU 1485; [2016] 1 LNS 1304, HC (refd)

Titular Roman Catholic Archbishop of Kuala Lumpur v Menteri Dalam Negeri & Ors [2014] 4 MLJ 765; [2014] 6 CLJ 541, FC (refd)

Legislation referred to

Companies Act 1965 ss 24, 24(4), 181

Appeal from: Application For Judicial Review No Wa-25–28–02 of 2016 (High Court, Kuala Lumpur)

Gan Khong Aik (Kang Mei Yee with him) (Gan Partnership) for the appellants.
Mohamad Rizal Fadzil (Senior Federal Counsel, Attorney General's Chambers) for the first respondent.
Wong Rhen Yen (S Raven, Ahmad Ezmeel and Siti Nur Amirah Aqilah bt Adzman with him) (S Ravenesan) for the second respondent.

David Wong JCA (delivering majority judgment of the court):

INTRODUCTION

[1] We have read the draft grounds of our learned brother, Justice Hamid Sultan bin Abu Backer. However, with regret and respect, we are unable to

concur with him on the outcome of this appeal. Hence the grounds herein are the views of myself and my sister Justice Umi Kalthum bt Abdul Majid and reasons as to what we think should be the outcome of this appeal.

[2] This appeal emanates from the learned judge's refusal, in a judicial review application by the appellants/applicants, to quash the decision of the first respondent in consenting to the two amendments to the articles of association of the second respondent approved in an extraordinary general meeting dated 10 October 2015.

[3] We heard the appeal and reserved our decision. We have since further considered submissions from respective counsel and now give our decision and grounds.

[4] For convenience, United Chinese School Committees' Association of Malaysia, United Chinese School Teachers' Association of Malaysia and the third appellant will be referred to as Dong Zong, Jian Zong and Merdeka University respectively.

BACKGROUND FACTS

[5] The historical background of respective parties has been accurately and succinctly set out by the respective counsel and learned judge and we adopt them. However, we see no necessity to repeat them all here except to set out the salient facts for this appeal.

[6] The second respondent is a company limited by guarantee incorporated under the Companies Act 1965 on 24 March 1994. It was formed by the first, second and third appellants with the primary objective to promote Chinese education by establishing a complete education system spanning from the primary level to the tertiary level in Malaysia. The initial subscribers were as follows:

(a) Quek Suan Hiang representing the first appellant;

(b) Loot Ting Yee representing the second appellant; and

(c) Foo Wan Thot @ Foo Wan Kang representing the third appellant.

[7] The majority directors of the second respondent on 17 September 2015 through one Yap Kiam @ Yap Sin Tin, as Chairman of the second respondent issued a notice to convene an extraordinary general meeting on 10 October 2015 for the purpose of seeking the approval of members of the second respondent to pass the two proposed special resolutions.

[8] However, on the same day, namely 17 September 2015, Dong Zong held a meeting in which it resolved as follows:

(a) that the first appellant be appointed as the new chairman of Dong Zong; and

(b) that five new representatives be nominated as nominees of Dong Zong in the second respondent's Board of Directors for the tenth term from the year of 2014–2018.

[9] On 28 September 2015, the first appellant in his capacity as the new Chairman of Dong Zong informed via letters to Yap Kiam @ Yap Sin Tin and Chow Siew Hon that they no longer represent Dong Zong on the board of directors of the second respondent. Also on the same day, the second appellant as vice chairman of the second respondent issued a notice to convene a special meeting on 5 October 2015 for the purpose of cancelling the EGM on 10 October 2015 convened by Yap Kiam @ Yap Sin Tin.

[10] The second respondent took up an originating summons to declare that notices issued by the first appellant to convene the 5 October 2015 special meeting invalid and irregular. Prior to the trial of that originating summons, the second respondent had also obtained an injunction to stop the special meeting on 5 October 2015 but that injunction was ignored resulting in a resolution to cancel the special meeting on 5 October 2015.

[11] The High Court on 15 December 2015 sustained the application of the second respondent in the originating summons which in effect declared that the special meeting held on 5 October 2015 to be invalid. An appeal has been lodged against that decision of the High Court under Appeal No W-02(NCVC)(A)-53–01 of 2016. That appeal is pending before us which at this juncture we make no views on it.

[12] Reverting back to the EGM dated 10 October 2015, the two proposed special resolutions related to amending article 14(b) and deleting article 18(viii) of the articles of association of the second respondent. The details of the amendments are as set out in the circularised notice issued by Yap Kiam @ Yap Sin Tin which for clarity we produce herein:

I certify that this is the true translation for the document produced for translation and marked as:

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Terjemahan

TAN SOCK KIM
Certificated Interpreter/Translator
Retired Senior Interpreter of
Shah Alam High Court
Selangor, Malaysia

Company No.: 292570-A

LAMPIRAN B

DONG JIAO ZONG HIGHER LEARNING CENTRE BHD

EXISTING PROVISION	PROPOSED AMENDMENTS
Directors and Board of Directors	Directors and Board of Directors
14(b) The Board shall consist of not more than Thirty-One (31) members, which include:-	14(b) The Board shall consist of not more than Thirty-Five (35) members, which include:-
(i) Five (5) nominees each from United Chinese School Committees' Association of Malaysia, The United Chinese School Teachers' Association of Malaysia and Merdeka Universiti Berhad;	(i) Two (2) nominees each from United Chinese School Committees' Association of Malaysia, The United Chinese School Teachers' Association of Malaysia and Merdeka Universiti Berhad;
ii) Ten (10) members to be elected from the Individual members;	ii) Twenty-Five (25) members elected from the Individual Members;
(iii) Six (6) members to be appointed by the Board, in their absolute discretion.	(iii) Four (4) members to be appointed by the Board, in their absolute discretion.
The members of the Board shall from amongst their members elect within 14 days of the Annual General Meeting an Executive Board of Directors comprising of a Chairman, a Vice Chairman, an Honorary Secretary and an Assistant Honorary Secretary, an Honorary Treasurer and an Assistant Honorary Treasurer and one (1) elected Director.	The members of the Board shall from amongst their members elect within 14 days of the Annual General Meeting an Executive Board of Directors comprising of a Chairman, a Vice-Chairman, an Honorary Secretary and an Assistant Honorary Secretary, an Honorary Treasurer and an Assistant Honorary Treasurer and one (1) elected Director.
Disqualification of Directors	Disqualification of Directors
18(viii) is suspended or removed its membership by the organization which nominates him	18(viii) ~~is suspended or removed its membership by the organization which nominates him;~~ (deleted)
(ix) Fail to attend meeting thrice consecutively without excuses	~~(ix)~~ (viii) Fail to attend meeting thrice consecutively without excuses
	Notes: Article 18(viii) to be deleted, and Article 19(ix) to be re-numbered as 18(viii)

[13] The two proposed resolutions were passed at the EGM on 10 October 2015. However, for the two proposed resolutions to be effective, cl 5 of the memorandum of association must be complied with. It reads as follows:

> No addition, alteration or amendment shall be made to or in the provisions contained in the Memorandum or Articles of Association the Company for the time being in force, unless the same shall have been previously submitted to and approved in writing by the Minister vested with such authority in Malaysia.

[14] Section 24(4) of the Companies Act 1965 also provides that:

> Where the memorandum or articles of a company include as a result of a direction of the Minister given pursuant to subsection (3) or pursuant to any corresponding previous written law a provision that the memorandum or articles shall not be altered except with the *consent of the Minister* the company may with the *consent of the Minister* by special resolution alter any provision of the memorandum or articles.

[15] Pursuant to the above provisions, the second respondent submitted the two approved resolutions on 15 October 2015 for the approval or consent of the first respondent.

[16] The appellants on 2 November 2015 wrote to the first respondent and expressed their objection to the two approved resolutions. The aforesaid letter reads as follows:

Exhibit "DJZ-9..." 288

董教总教育中心
(保證有限公司)
Dong Jiao Zong Higher Learning Centre Bhd.
A non-profit limited company
(292570-A)

DI TERIMA
03 NOV 2015
KEMENTERIAN PERDAGANGAN DALAM NEGERI, KOPERASI DAN KEPENGGUNAAN

Tarikh: 2-11-2015

YB Dato' Hamzah Bin Zainudin
Menteri
Kementerian Perdagangan Dalam Negeri,
Koperasi dan Kepenggunaan
No 13, Persiaran Perdana,
Presint 2, 62623 Putrajaya,
Malaysia

Melalui Serahan Tangan /
Pos Berdaftar
Fax No: 03-8882 5983

YB Dato' Menteri,

Per: NOTIS BANTAHAN TERHADAP PINDAAN KE ATAS ARTIKEL SYARIKAT DONG JIAO ZONG HIGHER LEARNING CENTRE BHD (No. Syarikat : 292570-A) ('Syarikat tersebut')

Dengan segala hormatnya kami merujuk kepada perkara di atas.

Tujuan notis ini adalah untuk merakamkan bantahan terhadap pindaan Artikel Syarikat tersebut pada Mesyuarat Agung Luar Biasa (EGM) Syarikat tersebut yang telah diadakan pada 10 haribulan Oktober 2015. Pindaan tersebut adalah seperti di bawah:-

i) Artikel 18(viii) 'is suspended or removed its membership by the organisation which nominates him' telah dibatalkan dan digantikan secara tidak sah dengan Artikel 18(ix);

ii) Artikel 14(b) di mana komposisi dalam Lembaga Pengarah telah dipinda secara tidak sah daripada 31 orang member kepada 35 orang member di mana:-

Jumlah penama yang dilantik oleh United Chinese School Committees' Association of Malaysia, The United Chinese School Teachers' Association of Malaysia dan Merdeka Universiti Berhad telah dikurangkan daripada 15 orang kepada 6 orang.

Penambahan jumlah pengarah yang dipilih dari kalangan *Individual member* daripada 10 orang kepada 25 orang

Pengurangan jumlah pengarah yang dilantik oleh Lembaga Pengarah daripada 6 orang kepada 4 orang.

Memandangkan terdapatnya bantahan yang dibuat oleh majoriti ahli-ahli lembaga pengarah Syarikat tersebut, pihak peguam kami adalah dalam proses untuk memfailkan suatu tindakan sivil ke Mahkamah untuk membatalkan pindaan tersebut dan segala resolusi yang konotnya diluluskan dalam mesyuarat (EGM) tersebut.

Selanjutnya, kami melampirkan Lembaga Pekeliling yang bertarikh 20-10-2015 untuk perhatian pihak Yang Berhormat Dato Menteri. Kami juga dengan rendah diri memohon kerjasama pihak Yang

Berhormat Dato Menteri supaya tidak membenarkan atau meluluskan sebarang permohonan berkaitan dengan pendaftaraan atau kelulusan pindaan tersebut serta resolusi berkaitan sehingga perkara ini diselesaikan dan/atau diputuskan oleh Mahkamah yang Mulia.

Bersama-sama ini kami juga melampirkan borang-borang 11 dan kelulusan-kelulusan daripada pihak Yang Berhormat Dato Menteri yang dahulu yang dibuat ke atas pindaan-pindaan syarikat tersebut di mana dengan jelasnya menunjukkan kelulusan pihak Yang Berhormat Dato Menteri haruslah didapatkan terlebih dahulu sebelum sebarang pindaan dibuat di EGM.

Sekian Terima kasih.

Yang benar,

Bagi pihak Dong Jiao Zong Higher Learning Centre Bhd

DONG JIAO ZONG 董教总 教育中心 (未註明)有限公司 (Company No. 292579-A) HIGHER LEARNING CENTRE BHD.

(ONG CHIOW CHUEN AMN PPN)

Naib Pengerusi Dong Jiao Zong Higher Learning Centre Bhd

s.k

1. Ketua Pegawai Eksekutif
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U/P: Ybhg. Dato' Zalirah Abd Wahab Fenner

2. Setiausaha Syarikat Dong Jiao Zong Higher Learning Bhd
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U/P: Ms. Wong Shan May

[17] The aforesaid letter of objection was then referred to the first respondent by his secretary on 5 November 2015. Having taken into consideration the objection by the appellants, the first respondent on 11 November 2015 approved the application for alteration and/or amendment to article 14(b) and article 18 of the article of association.

[18] On 2 January 2016, an EGM was held by the board of directors of the second respondent to announce to the members of the second respondent the

A approval given by the first respondent. Thereafter, in giving effect to the aforesaid amendments, nominations were made for the election of 16 new directors of the second respondent. The election was duly conducted with 16 new directors of the second respondent being elected.

B PROCEEDINGS IN THE HIGH COURT

[19] The appellants in the High Court sought the following reliefs:

(a) an order of certiorari to quash the consent of the first respondent dated 11 November 2015 given to the second respondent to amend its articles of association;

(b) a declaration that the amendments to the articles of association of the second respondent as purportedly approved at the purported extraordinary general meeting on 10 October 2015 shall not take effect; and

(c) in addition to (b) above, an order of mandamus that the first respondent to direct status quo to be reinstated to the affairs of the second respondent prior to the purported taking effect of the amendments to the articles of association of the second respondent as purportedly approved at the purported extraordinary general meeting on 10 October 2015 as if the same did not take effect before.

[20] The learned judge dismissed the appellants' application with costs premised on the ground that the first respondent had exercised his discretion properly in that relevant considerations were given due regard prior to making the decision to approve the relevant amendments to the article of association of the second respondent.

GROUNDS FOR OUR DECISION

[21] Before we discuss the submissions of counsel for the appellants, we see fit to restate the legal position of the High Court when dealing with a judicial review of a decision of a Minister of the Government. The nature of this sort of application is one of 'review' as opposed to one of 'appeal' as we know it. In an appeal hearing, the High Court of course can dwell into the evidence and form a view of its own and substitute the same to that of the Minister. In a review hearing, the High Court is not concerned with the correctness of the decision of the decision maker and should not interfere with the decision unless that decision is illegal in law or a real error of law. Its only concern is to examine the decision-making process of the Minister. That process would include whether the Minister had asked the wrong question, taken into consideration irrelevant considerations and applied the wrong law.

[22] However, the decision of the Minister can be challenged in court on the

principle of reasonableness as established in the case of *Associated Provincial Picture Houses Ltd v Wednesbury Corporation* [1947] 2 ALL ER 680; [1948] 1 KB 223 where it held as follows:

> It is true the discretion must be exercised reasonably. Now what does that mean? Lawyers familiar with the phraseology commonly used in relation to exercise of statutory discretions often use the word 'unreasonable' in a rather comprehensive sense. It has frequently been used and is frequently used as a general description of the things that must not be done. For instance, a person entrusted with a discretion must, so to speak, direct himself properly in law. He must call his own attention to the matters which he is bound to consider. He must exclude from his consideration matters which are irrelevant to what he has to consider. If he does not obey those rules, he may truly be said, and often is said, to be acting 'unreasonably'. Similarly, there may be something so absurd that no sensible person could ever dream that it lay within the powers of the authority. Warrington LJ in *Short v Poole Corporation* (1) gave the example of the red-haired teacher, dismissed because she had red hair. That is unreasonable in one sense. In another sense it is taking into consideration extraneous matters. It is so unreasonable that it might almost be described as being done in bad faith; and, in fact, all these things run into one another.

[23] In his submission, learned counsel for the appellants set out five complaints as follows:

(i) the learned judge ought to have found that the first respondent did not exercise his own discretion;

(ii) the learned judge ought to have found that the first respondent failed to consider relevant considerations in giving his consent to the amendments;

(iii) the learned judge misdirected herself from the real issue;

(iv) the learned judge further misdirected herself in holding that the second respondent is empowered to make the amendments to the provision of the memorandum and articles of association; and

(v) the learned judge failed to rule that the first respondent had taken into consideration irrelevant matters in giving his consent to the amendments.

Complaint (i) — Non-exercise of discretion

[24] Learned counsel's complaint is mainly premised on what was stated by the first respondent in his affidavit in reply dated 11 May 2016 which says as follows:

> (5.2) Pada 6 November 2015, saya telah menerima surat daripada Ketua Pegawai Eksekutif SSM bertarikh 5 November 2015 bersama dokumen-dokumen yang berkaitan. Surat Ketua Pegawai Eksekutif

SSM bertarikh 5 November 2015 telah menyatakan bahawa SSM telah menyemak permohonan tersebut dan mendapati ianya teratur dan boleh diperakukan untuk saya luluskan.

...

(5.4) Saya dapati SSM telah meneliti dan menyemak dokumen-dokumen berkaitan permohonan tersebut ...

(5.5) Berdasarkan pandangan dan syor pihak SSM yang mendapati tiada perlanggaran prosedur berlaku dan tidak bercanggah dengan mana-mana peruntukan Akta Syarikat 1965, saya menggunakan budibicara saya untuk meluluskan pindaan Fasal 14(b) dan membatalkan Fasal 18(viii) Artikel Pertubuhan Dong Jiao Zong.

...

(13) Seterusnya saya dengan sesungguhnya menyatakan bahawa kebenaran yang saya berikan tersebut tidaklah bermaksud untuk menjejaskan kuasa kawalan Pemohon Pertama, Pemohon Kedua dan Pemohon Ketiga seperti yang didakwa tetapi kebenaran tersebut diberikan berdasarkan pandangan dan syor pihak SSM yang disokong oleh dokumen-dokumen yang dilampirkan bersama permohonan tersebut tidak melanggar Memorandum dan Artikel Pertubuhan Dong Jiao Zong ...

(20) Merujuk kepada perenggan 38 Afidavit Pemohon, saya sesungguhnya menyatakan bahawa saya berpuashati dengan pandangan dan syor pihak SSM yang merangkumi tujuan, justifikasi dan kesan terhadap setiap pindaan yang mana jelas menunjukkan kesemua Pemohon Pertama, Pemohon Kedua dan Pemohon Ketiga masih mempunyai dua (2) wakil di dalam Lembaga Pengarah Syarikat Dong Jiao Zong dan oleh itu, berdasarkan syor pihak SSM yang telah memeriksa peruntukan di dalam Memorandum dan Artikel Pertubuhan Dong Jiao Zong dan peruntukan undang-undang di dalam Akta Syarikat 1965, saya memberikan kebenaran untuk pindaan-pindaaan tersebut.

...

(27) Seterusnya setelah ... dan menyatakan bahawa berdasarkan pandangan dan syor SSM, YST mengadakan EGM tersebut mengikut prosedur dan undang-undang.

...

(29) Merujuk kepada perenggan 45 Afidavit Pemohon yang saya nafikan, saya menyatakan di sini bahawa kelulusan pindaan tersebut dibuat dengan melihat kepada pandangan dan syor SSM.

[25] Learned counsel submits that the averments in the affidavit show clearly that the first respondent had not exercised his discretion as he had 'mechanically' followed the recommendation of ('Companies Commission of

Malaysia'). The case of *Hj Awang Tengah Hj Awang Amin v Sabah Public Service Commission Government of the State of Sabah* [1998] MLJU 10; [1998] 2 CLJ SUPP 40 is referred to us as authority for his submission. In that case, the High Court judge at p 431 had relied and applied on what was stated by the learned author in *Administrative Law of Malaysia and Singapore* (3rd Ed) and that is an administrative action is flawed and invalid when there is a non-application of the authority's mind when making its purported decision and this happens when an authority: (i) acted under dictation; (ii) acted mechanically; or (iii) fettered its discretion.

[26] In the case at hand, the first respondent's discretion derives from s 24(4) of the Companies Act 1965. It is the submission of the appellants that the first respondent had merely relied on the view of the ('chief executive officer') of CCM in coming to his decision. That does not amount to an exercise of any discretion according to learned counsel. What the first respondent should have done was to inquire further whether the CEO of CCM had taken into consideration of the letter of objection.

[27] With respect, we are not in agreement with learned counsel for the appellants and our reasons are these. The first respondent had before him the letter of complaint which in our view was perfectly in order for him to refer it to the CEO of CCM for his views as it concerned the second respondent which is a company limited by guarantee under the Companies Act 1965. We would have been in agreement with learned counsel if that was the only information before the first respondent. It is undisputed that the second respondent had provided the reasons for the relevant amendments to the article of association when seeking for the consent of the first respondent. That being the case, we find that the first respondent had conducted a proper evaluation of the materials before him before reaching his decision in approving the relevant amendments. It was definitely not a mechanical exercise of his discretion. Hence we find that there is no merit in the submission of the appellants on this complaint.

Complaint (ii) — Inadequate consideration in giving consent

[28] The crux of the complaint of the appellants was that the first respondent had failed to inquire further into the rationale for the amendments sought by the second respondent. For clarity, we reproduce the chart set out in the submission of learned counsel:

No	Reasons	Amendments for Article 14(b)	Amendments for Article 18
1.	Rationale	Increase number of Board from 31 members to 35 members.	The existing Article 18 (viii) be deleted in its entirety.
2.	Justification	Due to expansion of businesses and upgrading of New Era College to University College status, the Board requires more members to assist in process, manage, handle and deal with their business affairs.	To remove vague and unnecessary condition for disqualification of Directors that will cause any conflict/dispute in the Board.
3.	Impact: (i) Before	Restriction to the number of the Board without amending the M&A.	To avoid unnecessary disputes create to the Directors without amending the M&A.
	(ii) After	To Increase the number of Board from 31 members to 25 members.	The existing Article 18(ix) to be renumbered to read as Article 18(vii).
4.	Whether contrary to Companies Act 1965	The 2nd Respondent is of the view that the proposed amendments is not contrary to Companies Act 1965.	The 2nd Respondent is of the view that the proposed amendments is not contrary to Companies Act 1965.

[29] It is the submission of learned counsel that had the first respondent inquired further it would have become clear to him that the amendments had actually changed the structure of the board of directors in that the appellants' influence in the board would have been diluted from 15 directors to six directors.

[30] With respect, learned counsel had overlooked the glaring absence of any prohibition in the articles of association of the second respondent to change the structure of the board of directors. Without such provision, there is no legal impediment on the part of the members of the second respondent to exercise the rights given to them in the articles of association. Had the founders of the second respondent wanted to have the original structure of board of directors to be of a permanent nature that could have been easily done by inserting in the articles of association a provision to reflect their intention. And as pointed out by learned counsel for the second respondent, the will of the members is very much a consideration which the first respondent cannot ignore. In any event, it is not the duty of the court to substitute its decision to that of the Minister when he is exercising his discretion empowered by law.

[31] Learned counsel for the appellants also submits that there was a mutual understanding among members of the second respondent that the board structure should not be changed. With respect, there is no evidence to that at all before the court and further this mutual understanding was never highlighted in the letter of objection lodged by the appellants to the first respondent. In any event, the power structure in the second respondent had not changed as pointed out by the learned judge in para 28 of the grounds which read as follows:

> [28] It is noted that based on AA of the second respondent, cll 4, 12(a) and 13(j) clearly shows that in any of the annual general meeting and/or EGM of the second respondent, both the three organisational member (regardless of the number of nominee) and/or individual member are only entitled to one vote each. As such, the enlargements and/or reduction of the number of nominees of the applicants did not in any ways affects the status of the applicants in the board of director of the second respondent. This essentially mean that at all times, the applicants would collectively represent three votes and nothing more out of the overall number of the board of director in the second respondent.

Complaint (iii) — Judge wrong on the real issue

[32] The complaint here is that the learned judge only looked at the voting power of the appellants as members of the second respondent and not the change in the structure of the board of directors as alluded to earlier. Again we see no merit in this contention. The learned judge merely pointed out that the appellants never had control as members in the second respondent in the first place. Hence there cannot be any ground to complain that they have lost control of the board of directors.

Complaint (iv) — Second respondent not empowered to make amendments

[33] Learned counsel for the appellants essentially submits that the amendments were made in bad faith and not whether such power exist in the memorandum and articles of association. Learned counsel in fact relied on the contention that amendments were against the law of equity and that with respect is clutching at straw.

Complaint (v) — First respondent took into consideration irrelevant consideration

[34] If what we understand from learned counsel here, he is saying that the first respondent should not have considered the application for his consent as the second respondent should have first obtained his consent for the amendments and not after the special resolutions for the amendments had been approved by the members of the second respondent as in this case. Again we see no logic in the argument. Clause 5 of the memorandum of the second respondent is crystal clear and it reads as follows:

ADDITIONAL, ALTERATION OR AMENDMENT

5. No addition, alteration or amendment shall be made to or in the provisions contained in the Memorandum or Article of Association of The Company for the time being in force, unless the same shall have been previously submitted to and approved in writing by the Minister vested with such authority in Malaysia.

[35] What the second respondent did here was to implement the amendments only after the consent of the first respondent was given on 11 November 2015 and that was done by an EGM on the 2 January 2016 to adopt the approval of amendments to the articles of association. Hence, we see no merit in this complaint.

CONCLUSION

[36] We see this as a clear case of the members exercising their rights entrenched in the memorandum and articles of association of a corporation limited by guarantee incorporated under the Companies Act 1965. Further, full compliance of the procedural requirements under the memorandum and articles of association and legal requirement under s 24(4) of the Companies Act 1965 have been met by the second respondent.

[37] Further, it is of no insignificance that the appellants had taken a s 181 oppression suit against the majority shareholders of the second respondent seeking to set aside the EGM resolution of 10 October 2015 which, to recapitulate, is the resolution approving the amendments and then withdrew the same.

[38] Hence, we see no reason to disturb the judgment of the High Court and hereby dismiss the appeal with costs in the sum of RM10,000 to each set of the respondents, subject to payment of allocatur fees, where applicable. We also order that the deposit be returned to the appellants.

Hamid Sultan JCA (delivering dissenting judgment of the court):

[39] The appellant's appeal is against the decision of the learned High Court judge who refused to quash the decision of the first respondent who purportedly had acted mechanically and without taking into consideration relevant matters when allowing an amendment to the articles of association of the second respondent.

[40] It is important to note that the amendment is about one group taking control of the second respondent to the detriment of the appellants who are also the founder members of the second respondent. Further, when the amendment was sought for, there was a requirement for the second respondent

to give particulars to the Companies Commission of Malaysia ('CCM'). The important information which must be supplied to CCM and will form part of the decision making process of the first respondent is: (a) the rationale of the amendment(s); (b) the justification of the amendments; (c) the impact prior and after the amendment(s); and (d) whether the proposed amendment(s) is and/or are contrary to any provisions of the Companies Act 1965.

[41] It must also be noted that the amendments were not procedural in nature but substantive in nature, affecting a group or community or community interest which on the part of the second respondent requires full disclosure to the relevant authority to subscribe to the concepts of accountability, transparency and good governance for the relevant authority to take into consideration of the true impact of the amendment before deciding whether the amendment should or should not be allowed. The failure of the second respondent in not disclosing the crucial information to the authorities taints the whole process requiring the decision of the first respondent to be quashed. It must not be missed that even though the appellants as well as the second respondent are veiled in the banner of private institutions, but their role is inextricably entwined with the aspiration of Chinese community in the country in the field of education. In consequence, accountability, transparency and good governance cannot be compromised. And the Minister has been designated to a role akin to a referee to ensure harmonious relationship is maintained without any violation to the purpose and intent of the second respondent.

BRIEF FACTS

[42] The brief facts have been well articulated by the learned trial judge. I do not wish to repeat, save to say that this judgment must be read together with the High Court judgment, to appreciate the grounds of my judgment in the proper perspective (see *Temenggong Lau Lee Meng, The Chairman Of United Chinese School Committee's Association Of Malaysia & Ors v Menteri Perdagangan Dalam Negeri, Koperasi Dan Kepenggunaan Malaysia & Anor* [2017] MLJU 1485; [2016] 1 LNS 1304). I will summarise the facts of the case in my own words as follows:

(a) the first appellant was formed by the Associations of the Chinese Board of Governors of each state in the country. Its objective, inter alia, is to safeguard, promote and develop the Chinese education in Malaysia and commonly referred to as Dong Zong;

(b) the second appellant is formed by the Chinese school teachers in various parts of the country, inter alia, to promote Chinese education and cultural activities and commonly referred to as 'Jiao Zong';

(c) the third appellant was formed by the first and second respondent in the effort of ensuring the continued existence and development of Chinese education in Malaysia;

(d) the appellants jointly established the second respondent, a non-profit limited company and in accordance with s 24 of the Companies Act 1965 ('the CA 1965'). It is provided under cl 5 of the memorandum of the second respondent as follows:

> No addition, alteration or amendment shall be made to or in the provisions contained in the Memorandum or Articles of Association of the Company for the time being in force, unless the same shall have been previously submitted to and approved in writing by the Minister vested with such authority in Malaysia.

(e) s 24(4) of the CA 1965 states:

> Where the memorandum or articles of a company include as a result of a direction of the Minister given pursuant to subsection (3) or pursuant to any corresponding previous written law a provision that the memorandum or articles shall not be altered except with the *consent of the Minister* the company may with the *consent of the Minister* by special resolution alter any provision of the memorandum or articles.

(f) cl 14(b)(i) of the articles of association provides that each of the appellants shall have five directors as their nominees, in the board of directors of the second respondent constituting majority of the board of directors. The composition as per the appellants chart read as follows:

No.	Classes of members which form the Board of Directors of the Company	Number of Nominees and/or Members
1.	Registered Organisations	
	(a) Dong Zong	5
	(b) Jiao Zong	5
	(c) Merdeka University Bhd	5
2.	Individual Members	10
3.	Member Appointed by the Board	6
	TOTAL	**31**

(Note: I observed that it is not clear from the wording of s 24(4) of the CA 1965 whether consent must first be obtained from the Minister before the special resolution can be placed before the members. As this issue was not raised, I will not deliberate on it).

(g) there had been internal squabbling between the members of the board of various groups that per se is not a relevant factor for purpose of this judgment even though the second respondent's group has secured necessary approvals from the EGM but it has been hotly contested;

(h) the effect of the amendment will reduce the appellants representative from five nominees each to only two and the number of directors to be elected will be increased from ten to 25. The appellants chart on this reads as follows:

No.	Classes of members which form the Board of Directors of the Company	Number of Nominees and/or Members
1.	Registered Organisations	
	(a) Dong Zong	2
	(b) Jiao Zong	2
	(c) Merdeka University Bhd	2
2.	Individual Members	25
3.	Member Appointed by the Board	4
	TOTAL	**35**

(i) the amendments were sent for approval of the first respondent on 15 October 2015. The appellants on 2 November 2015 has brought to the attention of the first respondent that there is a dispute over the amendments. The objection was also informed to CCM;

(j) despite of the objection, CCM wrote to the first respondent recommending the amendment. Within the next six days, the first respondent gave the consent to the amendments;

(k) from the official website of CCM, there are about four columns which are to be filled by the second respondent when making its application for the approving of the first respondent to amend its articles of association under s 24(4) of the Companies Act 1965. The said column reads as follows:

No.	Fasal / Artikel Semasa	Cadangan Pindaan	Ulasan
			Setiap pindaan perlu diulas dengan mengambil kira perkara-perkara berikut: (i) Tujuan/Sebab; (ii) Justifikasi; (iii) Impak sebelum dan selepas pindaan; dan (iv) Percanggahan dengan Akta Syarikat 1965.

(l) the reasons given by the second respondent in Annexure A which falls short of what is required to be stated as per the appellants chart read as follows:

No.	Reasons	Amendments for Article 14(b)	Amendments for Article 18

1.	Rationale	Increase number of Board from 31 members to 35 members.	The existing Art. 18 (vii) be deleted in its entirety.
2.	Justification	Due to expansion of businesses and upgrading of New Era College to University College statues, the Board requires more members to assist in process, manage, handle and deal with their business affairs.	To remove vague and unnecessary condition for disqualification of Directors that will cause any conflict
3.	Impact: (1) Before	Restriction to the number of the Board without amending the M&A.	To avoid unnecessary disputes create to the Directors without amending the M&A.
	(2) After	To increase the number of Board from 31 members to 25 members.	The existing Article 18(ix) to the renumbered to read as Article 18(vii).
4.	Whether contrary to Companies Act 1965	The 2nd respondent is of the view that the proposed amendments are not contrary to Companies Act 1965.	The 2nd respondent is of the view that the proposed amendments is not contrary to Companies Act 1965.

[43] In my view, the reasons stated by the second respondent prima facie does not address the information which is required to be stated to the CCM for the information of the Minister. Failing to furnish the required information to the relevant authorities that too by the second respondent on a matter related to community and/or community interest does not reflect bona fide in obtaining the authorities consent. That per se will lead to authorities making decision without being duly informed. Such conduct will undermine the integrity of the executive decision making process warranting the decision to be quashed.

[44] In ordinary circumstances related to company matters, the consent of the Minister is not a sine qua non to amend the articles of association. In the instant case, the Minister's consent is necessary. That is to say, the Minister stands as a stakeholder in relation to the relevant articles of association. The amendment attempted by the second respondent in corporate jurisprudence will amount to an entrenched minority right to founder members which can result in a winding up of a company under the well-established principles of *Ebrahimi v Westbourne Galleries Ltd and others* [1972] 2 All ER 492; [1973] AC 360. I am not saying here that *Ebrahimi*'s principle applies but I am just mentioning the seriousness of the amendment which attempts to take control of the strength of the appellants in decision making process of the second

respondent. On such a serious implication on the proposed amendment, if proper information is not supplied to the relevant authorities it is unlikely for the Minister to make a decision on informed basis. If the relevant information has been supplied to the Minister and the Minister makes a decision then the court will not ordinarily intervene in the decision of the Minister unless the rule of law has been compromised (see *National Union of Bank Employees v Director General of Trade Unions & Anor* [2015] 1 MLJ 881).

[45] Support for the proposition that the applicant has a duty to act bona fide and supply the relevant information has been captured in a number of cases though these cases are not related to administrative law. To name a few are as follows:

(a) in *Allen v Gold Reefs of West Africa, Limited* [1900] 1 Ch 656 at pp 671–672 it was stated:

> The power thus conferred on companies to alter the regulations contained in their articles is limited only by the provisions contained in the statute and the conditions contained in the company's memorandum of association. Wide, however, as the language of s 50 is, the power conferred by it must, like all other powers, be exercised subject to those general principles of law and equity which are applicable to all powers conferred on majorities and enabling them to bind minorities. It must be exercised, not only in the manner required by law, but also bona fide for the benefit of the company as a whole, and it must not be exceeded. These conditions are always implied, and are seldom, if ever, expressed. But if they are complied with I can discover no ground for judicially putting any other restrictions on the power conferred by the section than those contained in it.

(b) what is beneficial to the company as a whole was set out in the case of *Greenhalgh v Arderne Cinemas Ltd and Others* [1950] 2 All ER 1120 and adopted by the Federal Court in *Paidiah Genganaidu v The Lower Perak Syndicate Sdn Bhd & Ors* [1974] 1 MLJ 220 and it reads as follows:

> Certain things, I think, can be safely stated as emerging from those authorities. In the first place, it is now plain that 'bona fide for the benefit of the company as a whole' means not two things but one thing. It means that the shareholder must proceed on what, in his honest opinion, is for the benefit of the company as a whole. Secondly, the phrase, 'the company as a whole', does not (at any rate in such a case as the present) mean the company as a commercial entity as distinct from the corporators. It means the corporators as a general body. That is to say, you may take the case of an individual 'hypothetical member and ask whether what is proposed is, in the honest opinion of those who voted in its favour, for that person's benefit. I think the thing can, in practice, be more accurately and precisely stated by looking at the converse and by saying that a special resolution of this kind would be liable to be impeached if the effect of it were to discriminate between the majority shareholders and the minority shareholders so as to give to the former an advantage of which the latter were deprived. When the cases

A are examined where the resolution has been successfully attacked, it is on that ground that it has fallen down. It is, therefore, not necessary to require that persons voting for a special resolution should, so to speak, dissociate themselves altogether from the prospect of personal benefit and consider whether the proposal is for the benefit of the company as a going concern. If, as commonly happens, an outside person makes an offer to buy all the shares, prima facie, if the corporators think it is a fair offer and vote in favour of the resolution, it is no ground for impeaching the resolution because they are considering the position of themselves as individual persons. (Emphasis added.)

C **[46]** I have read the appeal record and the able submissions of the learned counsel. After much consideration to the learned counsel of the second respondent and of the first respondent, I take the view that the appeal must be allowed and the decision of the Minister must be quashed.

D **[47]** In the instant case, the second respondent has not furnished the required information to CCM for the Minister's consideration. On this issue, the first and second respondents submission were not adequate to enable me to decide on the bona fide issue.

E **[48]** The conduct of the second respondent has led to an unreasonable decision in the *Wednesbury*'s sense to have been made by the Minister. Lord Greene MR in the often cited case of *Associated Provincial Picture Houses Ltd v Wednesbury Corporation* [1947] 2 ALL ER 680; [1948] 1 KB 223 had F this to say:

For instance, a person entrusted with a discretion must direct himself properly in law. He must call his own attention to the matters which he is bound to consider. He must exclude from his consideration matters which are irrelevant to the matter that he has to consider. If he does not obey those rules, he may truly be said, and often G is said, to be acting 'unreasonably'.

[49] The law on judicial review has advanced from the subjective to that of the objective test (see *Titular Roman Catholic Archbishop of Kuala Lumpur v Menteri Dalam Negeri & Ors* [2014] 4 MLJ 765; [2014] 6 CLJ 541). Any H reasonable tribunal properly appraised of the facts and law would not succumb to the second respondent attempt to amend the memorandum of articles. In the landmark case of *Merdeka University Berhad v Government of Malaysia* [1982] 2 MLJ 243 (FC), Suffian LP had this to say:

I It will be noted that s 6 used the formula 'If the Yang di-Pertuan Agong is satisfied etc'. In the past such a subjective formula would have barred the courts from going behind His Majesty's reasons for his decision to reject the plaintiff's application; but, as stated by the learned judge, administrative law has since so far advanced such that today such a subjective formula no longer excludes judicial review if objective facts have to be ascertained before arriving at such satisfaction and the test of

unreasonableness is not whether a particular person considers a particular course unreasonable, but whether it could be said that no reasonable person could consider that course reasonable.

[50] For reasons stated above the appeal is allowed. The first respondent's decision is quashed with a note that the majority have dismissed the appeal. The second respondent to pay the costs to the first appellant.

I hereby order so.

Appeal allowed.

Reported by Ashok Kumar